



Paper No. 8

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COPY MAILED**NOV 06 2001****OFFICE OF PETITIONS**

In re Application of
Secer :
Application No. 09/770,427 : DECISION GRANTING
Filed: January 26, 2001 : PETITION
Attorney Docket No. 50671-P021US- :
10016435 :

This is a decision on the petition under 37 CFR 1.10(d), filed April 12, 2001, requesting that the above-identified application be accorded a filing date of January 26, 2001, rather than the presently accorded filing date of January 25, 2001.

Petitioner requests the later filing date on the basis that the application was deposited in Express Mail service on January 26, 2001, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by a copy of the customer copy of Express Mail label No. EL372554550US. This label lists a "date-in" of January 25, 2001. Express Mail label No. EL372554550US is found on the original itemized Patent Application Transmittal Letter. The customer copy of Express Mail label No. EL372554550US was date stamped by the Dallas, TX United States Postal Service (USPS) on January 26, 2001.

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in s 10.1(r) of this chapter.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed April 12, 2001 is accompanied by the corroborating evidence required by the rule. Accordingly, the petitions are granted. No petition fee has been or will be charged.

The application is being returned to Office of Initial Patent Examination for correction of the filing date to January 26, 2001 and issuance of a corrected filing receipt.

Thereafter, the application will be forwarded to Files Repository.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-6712.



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for Patent Examination Policy